

**Filed 6/17/09 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2009 ND 92

Robert Lee Johnson,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20090008

Appeal from the District Court of Stutsman County, Southeast Judicial District,
the Honorable Richard W. Grosz, Judge.

AFFIRMED.

Per Curiam.

Kent M. Morrow, 411 North 4th Street, P.O. Box 2155, Bismarck, ND 58502-
2155, for petitioner and appellant.

Frederick Russell Fremgen, State's Attorney, 511 2nd Avenue SE, Jamestown,
ND 58401, for respondent and appellee.

Johnson v. State

No. 20090008

Per Curiam.

[¶1] Robert Johnson appeals from the district court's judgment summarily dismissing his application for post-conviction relief. Johnson argues the district court erred in failing to hold an evidentiary hearing on his application for post-conviction relief because a genuine issue of material fact exists regarding whether his decision not to testify was informed and voluntary.

[¶2] The district court's judgment is affirmed under N.D.R.App.P. 35.1(a)(6).

[¶3] Gerald W. VandeWalle, C.J.
Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom